BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIO AYALA, Claimant, v. ROBERT J. MEYERS FARMS, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	**IC 2009-029533** **ORDER DENYING CLAIMANT'S MOTION FOR RECONSIDERATION** **Filed January 29, 2021**

Request for Reconsideration of an Order from Referee Alan Taylor denying Claimant's Motion to Compel and for Sanctions, finding Defendants had adequately responded to Claimant's discovery request. The Request for Reconsideration is DENIED.

The Commission filed its order on Claimant's Motion to Compel and for Sanctions on November 2, 2020. The Order, prepared by Referee Alan Taylor and signed by Referee Brian Harper, denied Claimant's Motion to Compel and for Sanctions on the grounds that it appeared as though "Defendants have adequately responded to Claimant's discovery request." Claimant filed a timely motion for reconsideration. Defendants submitted an untimely response and Opposition to Claimant's Motion for Reconsideration

As recognized by the Commission in its Order Denying Motion for Reconsideration in *Coronel v. Fleetwood Homes of Idaho and Insurance Company of State of Pennsylvania*, I.C. 2008-029252, filed September 23, 2011, the Commission has the authority to consider challenges to an interlocutory order from a Commission referee. In that decision, the Claimant challenged the

referee's Order on a Motion to Compel discovery. The Commission addressed its authority as follows:

> As a preliminary matter, Claimant has challenged an interlocutory order from a Commission referee. Under Idaho Code § 72-506(2), an order made by a referee is not an order of the Commission unless it is "approved and confirmed" by the Commission. This statute establishes the Commission's authority to review the orders of a referee; otherwise, the Commission would not be able to approve and confirm such orders. The process by which a party may seek Commission review of a referee's order is not expressly outlined by statute or rule. Review may be sought by means of a motion for reconsideration filed after the Commission has issued its decision in the case. *See Wheaton v. ISIF*, 129 Idaho 538, 928 P.2d 42 (1996) and *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122 (2000). Generally, however, the Commission prefers that challenges to interlocutory orders of a referee be made in the parties' post-hearing briefs, before the final decision has been issued.
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> There are some circumstances that justify earlier consideration of a challenge to a referee's order. These circumstances are similar to those that would compel the Idaho Supreme Court to consider an interlocutory appeal. Pre-hearing review is appropriate where the challenge "involves a controlling question of law as to which there is substantial grounds for difference of opinion," and when immediate consideration of the challenge "may materially advance the orderly resolution of the litigation." *See Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 149, 795 P.2d 309, 311 (1990).
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> Such circumstances exist in this case. Claimant's motion raises a significant question about the propriety of Defendants' requested discovery. Furthermore, the Commission's decision to confirm or overturn the Referee's Order could have a substantial impact on the type of evidence presented at hearing. Thus, Claimant's motion is best addressed before the hearing occurs. The Commission has authority to consider Claimant's motion under Idaho Code § 72-506(2) and J.R.P. 3(E)(1), which permits an "application to the Commission for an order."

Coronel, I.C. 2008-029252 (2011).

As in *Coronel*, addressing Claimant's discovery request at this stage is more appropriate than addressing it in the parties' post-hearing briefs. Review of Claimant's motion at this juncture enables alternate avenues of discovery, and overturning the Referee's Order could have a substantial impact on the type of evidence presented at hearing, as well as the questions asked of witnesses at hearing. As such, the consideration of the motion at this time is appropriate.

DISCUSSION

Claimant submitted his original Motion to Compel and for Sanctions seeking further response to the Interrogatories sent to Defendants. The interrogatory in question was Claimant's Supplemental Interrogatory No. 2(2)(a), which, "seeks data concerning Claimant's termination by Defendant-employer." Sub-paragraph (a) of said Interrogatory reads as follows:

> Please advise whether any written and/or reproducible record, instrument, memoranda, or otherwise exists pertaining to, describing and/or documenting the circumstances leading up to and/or resulting in the termination of said employment and/or the actual termination of said employment and, if so, please identify each individual and/or entity having possession of the same; describe by date, author, context and content thereof; and, the identity of the individual and/or entity actually preparing the same.

Defendants' response to said interrogatory was as follows:

> The Claimant and the Employer entered into a Termination Agreement in which the Claimant and the Employer mutually agreed to terminate their employment relationship. The approximate last date of the Claimant's employment was November 15, 2019. The decision to terminate the Claimant's employment was mutual, as the Claimant threatened to quit in August 2019, he had increasingly displayed a poor attitude towards his work and the Employer's operations, he had threatened the Employer's son-in-law with a weapon, tried to sell the Employer's equipment without permission and had potentially sabotaged the Employer's equipment/operations. The decision to terminate the employment relationship was made by the Claimant, Robert Meyers, Morgan Meyers and Trevor Ware (all c/o Augustine Law Offices, PLLC).

Claimant contends that this answer is insufficient, and further requests any written record or documentation be made available. While we agree with Claimants that Defendants' initial response does not directly address whether any written documentation or otherwise exists, Defendants clarified the matter in their Opposition to Claimant's Motion to Compel and for Sanctions filed with the Commission on September 22, 2020. In that pleading, Defendants clarified that no written documentation regarding the termination of Claimant exists to the best of Defendants' knowledge. Defendant's response reads, in pertinent part, as follows:

> The only information which they [Claimant's counsel] apparently now seek is whether some sort of written documentation describing the circumstances leading

> up to his [Claimant] termination exist. No such documents exist to the best of defendants' knowledge as defendants operate a small farm with very few employees and do not have sophisticated human resource divisions that document claimant's shortcomings. The defendants' failure to identify any such documents is an implicit statement that no such documents exist to the best of defendants' knowledge. Therefore defendants' answer adequately answered the discovery request putting claimant and his attorney a [sic] notice of the reasons the parties mutually agreed to terminate claimant's employment and his motion should therefore be denied.

In addition to this, rather than refusing to answer the interrogatory completely, or objecting to it, Defendants did provide Claimant with the names of those involved in the decision and how to contact them. While Defendants could have made their initial response more explicit, their response to Claimant's motion clarified their ability to respond to the interrogatory in question. While it is not illogical for Claimant to assume that as a corporate entity Defendant-Employer would have such reproducible data in existence, Claimant has not presented any argument that would otherwise indicate Defendants are "stonewalling," answering evasively, or acting in bad faith. Defendants' Opposition to Claimant's Motion to Compel and for Sanctions, sufficiently addresses Claimant's inquiries concerning the existence of documents and other things relating to Claimant's termination.

Under Idaho Rule of Professional Conduct 3.3, Candor Toward the Tribunal: "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." This same idea is captured in the provisions of JRP 3(E); "The signature of any party to an action, or the party's attorney, shall constitute a certification that said party, or the party's attorney, has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief after reasonable inquiry that there are sufficient grounds to support it, and that it is not submitted for delay or any other improper purpose." These obligations apply not only to Defendants' original

answer, but also to the representations made by Defendants in their response to the Claimant's motion to compel.

Absent more, the Commission finds no basis to conclude that Defendants have withheld tangible documentation relating to Claimant's termination, notwithstanding the original reference to a "Termination Agreement" in Defendants' answers. We find no reason to disagree with Referee Taylor's Order finding Defendants had adequately responded to Claimant's discovery request.

ORDER

Based on the foregoing, we decline to reconsider Referee Taylor's Order Denying Claimant's Motion to Compel. Claimant's Motion for Reconsideration is therefore DENIED.

IT IS SO ORDERED.

DATED this 29th day of January, 2021.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2021, a true and correct copy of the foregoing **ORDER DENYING CLAIMANT'S MOTION FOR RECONSIDERATION** was served by regular email upon each of the following:

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